



— I N D I A N A —

# **DISABILITY RIGHTS**

*The Protection and Advocacy System for Indiana*

## **Rights of Adults Receiving Treatment in an Indiana Mental Health Facility**

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Revised July 2017



INDIANA  
**DISABILITY RIGHTS**  
Equality Through Advocacy

*The information and procedures provided in this book are subject to change and should serve only as a guide. While this book is intended to provide basic information, it is not legal advice, nor is it intended to substitute for consultation with an attorney. While every attempt has been made to ensure accuracy, readers should direct questions concerning their specific situations to the attorney of their choice.*

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# How to Use this Book

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This book is designed to provide information about the rights of individuals who are receiving mental health treatment services within the state of Indiana.

The following pages contain information about commitments: the different kinds and how each type affects the rights of those receiving treatment. Information about the specific rights of those who are receiving treatment is also included. The Frequently Asked Questions portion has been included to help clarify areas which many readers have questions about. The final sections of this book include a copy of the Indiana laws about mental health treatment, resource information, and community mental health center contact information.

Readers who still have questions are encouraged to contact their treatment team, social worker, an attorney, or Indiana Disability Rights at 1-800-622-4845.

# Definitions and Types of Commitment

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A *commitment* describes the legal status of a person receiving mental health care. It also describes the legal process in which a court issues an order for mental health care. This order is known as a *commitment* order.

Commitments can be for outpatient or inpatient services. Under an outpatient commitment, an individual is still able to live in the community, but must follow the restrictions and requirements placed on him or her by the court. In contrast, an inpatient commitment requires that an individual stay within a facility while receiving mental health treatment. **This book explains the rights of those who have been given an *inpatient commitment*.**

Before taking a look at the types of commitments, it's important to understand some of the vocabulary used in the descriptions. Below are definitions for some of the most commonly used terms to describe commitments.

## **Definitions of Terms Used in Indiana's Commitment Statutes**

### **Mental illness** (Indiana Code 12-7-2-130 (1))

A psychiatric disorder that substantially disturbs an individual's thinking, feeling, or behavior and impairs the person's ability to function. In this case, the term *mental illness* includes intellectual disability, alcoholism, and addiction to narcotics or other drugs.

### **Dangerous** (Indiana Code 12-7-2-53)

A condition in which an individual, as a result of mental illness, presents a substantial risk that the individual will harm him/herself or others.

### **Gravely disabled** (Indiana Code 12-7-2-96)

A condition in which an individual, as a result of mental illness, is in danger of coming to harm because he/she:

- Is unable to provide for his/her food, clothing, shelter, or other essential human needs;
- ***or***
- Has a substantial impairment or an obvious decline of his/her judgment, reasoning or behavior that results in an inability to function independently.

## **Types of Commitment**

There are two primary ways that people become admitted to a mental health facility: *voluntary admission* and *involuntary commitment*. A commitment may also be the result of involvement in a criminal case. It is important to understand that the type of commitment can change during an individual's stay at a facility.

### **Voluntary Admission**

When a person over 18 years of age freely chooses to become a patient in a psychiatric hospital, he or she is voluntarily admitting him/herself for treatment. A consent for treatment is signed, indicating a willingness to be in the hospital. **Based on certain circumstances, voluntary admission can later become involuntary admission.**

### **Involuntary Admission**

There are four types of involuntary admissions:

1. Immediate detention,
2. Emergency detention,
3. Temporary commitment, and
4. Regular commitment.

It is important to know that *an immediate or emergency detention can become a temporary or regular commitment after the person has seen a judge*. Based on the information given at a hearing, the judge may decide that it would be best to issue the individual a temporary or regular commitment.

With that in mind, more detailed explanations of each involuntary admission type of commitment are below.

#### **Immediate Detention** (Indiana Code sec. 12-26-4)

This type of involuntary admission happens if a person with a mental illness is believed by law enforcement to be in need of hospitalization. A person can be held for 24 hours if a law enforcement officer has reasonable grounds to believe that the person is:

- Mentally ill,
- Dangerous to self or others or gravely disabled, **and**
- In immediate need of hospitalization and treatment.

The officer may take the person into custody and transport him or her to the nearest appropriate facility that is not a state institution. The officer may also charge the person with a criminal offense, if applicable.

The officer must submit a written statement to the facility containing the reasons for immediate detention. This statement will be filed in the individual's records at the facility.

Either the superintendent of the facility or a physician may provide emergency treatment necessary to preserve the health and safety of the person.

A person cannot be held under *immediate detention* for more than 24 hours from the time of admission without further action. However, if the superintendent or attending physician believes the person should be held longer, an application for *emergency detention* can be sought. The application must be filed immediately upon the availability of a judge, or within 72 hours of admission to the facility, whichever is earlier.

**Emergency Detention** (Indiana Code sec. 12-26-5-1)

A person can be kept in a facility for up to 72 hours (excluding weekends and legal holidays) if a written application is made to the facility stating the belief that the person is:

- Mentally ill,
- Either dangerous or gravely disabled, **and**
- In need of immediate restraint.

The application must include a written statement by at least one physician that, based on either an examination or information given by that physician, the person meets the above criteria.

**Temporary Commitment** (Indiana Code sec. 12-26-6)

A person can be temporarily committed to an appropriate facility or outpatient treatment program for up to 90 days if he/she is found by a court to be:

- Mentally ill, **and**
- Either dangerous or gravely disabled.

Prior to the end of the temporary commitment, proceedings for an extension can be filed with the court. The extension, if granted, cannot exceed 90 days. (Indiana Code sec. 12-26-6-10).

**Regular Commitment** (Indiana Code sec. 12-26-7)

Regular commitment may apply to a person:

- Alleged to be mentally ill,
- Either dangerous or gravely disabled, **and**
- Whose commitment is reasonably expected to require custody, care or treatment in a facility for more than 90 days.

These conditions must be included in the written statement of a physician who has examined the individual within the past 30 days. This statement must explain why the physician believes the individual meets the above criteria.

If the person is committed to a state institution, a community mental health center must have first evaluated the individual and reported that the commitment is appropriate. The court may order the individual's custody, care, or treatment in an appropriate mental health facility until that person has been discharged or the court terminates the commitment.

**Criminal Commitment** (Indiana Code sec. 35-36-3-1)

A commitment may also result from involvement in a criminal case.

If at any time before a criminal case is set for trial, the court reasonably believes that the defendant will not be able to understand the proceedings or assist in his/her defense, a hearing will be set to determine if he/she is capable of standing trial.

Before the hearing, the individual will be evaluated by two or three competent and unbiased mental health professionals. These professionals can be:

- Psychiatrists,
- Psychologists endorsed by the Indiana State Board of Examiners, **or**
- Physicians.

At least one of the professionals who examines the person must be a psychiatrist or psychologist. None of the examiners may be employed or be a contractor of a state institution. The professionals must have expertise in determining competency (the ability to understand the court proceedings and participate in one's defense).

At the hearing, the professionals who examined the defendant will speak about their findings and give their opinion as to whether they believe the person can understand the proceedings and assist in the preparation of his/her defense.

If it is found that the person is competent to stand trial, the trial will proceed. If it is found that the person cannot stand trial, the trial will be delayed and the person will be placed in the care of the Division of Mental Health and Addiction (DMHA). That agency will arrange for him/her to work on the skills needed to be able to stand trial at a later date. These services are called *competency restoration services*.

Restoration services may or may not be offered at a mental health facility. Services can be offered at the place where the defendant currently resides, such as a Department of Correction facility. The DMHA will decide which type of environment will be most beneficial to and safest for the person.

# Individual and Conditional Rights

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Those who receive an inpatient commitment still have certain rights. Individuals who receive mental health services are protected by the federal Patient Bill of Rights (42 U.S.C. sec. 10841) and the Indiana Code. Indiana's Constitution may also contain protections for those who are receiving treatment in a residential setting.

All facilities providing mental health services must respect the rights of their patients, as they are given by law.

## **Individual Rights**

Regardless of the type of commitment, all patients have certain rights. The following list has been compiled from State and Federal statutes. The rights listed below can be found in 42 U.S.C. sec. 10841 unless otherwise noted.

Many of the following rights are available, but there may be costs associated which must be paid for by the individual. Individuals can check with their facility for specific costs associated with the rights listed below.

### **A person receiving mental health treatment HAS THE RIGHT TO:**

- Access the grievance process, which includes:
  - Access to the facility's grievance (complaint) process.
  - Permission to use the process to file any grievances and appeals.
  - The grievance process may be used without fear of retaliation.
- Fair treatment, which includes:
  - Appropriate mental health services and/or developmental training according to the standards of professional practice. The services should be appropriate to individual needs and designed to provide reasonable opportunity for patients to improve their condition.
  - Participation in the planning of an individualized written treatment plan. Individuals must be informed of the type of treatment or habilitation program proposed, the known effects of receiving and not receiving such treatment, as well as any possible alternative treatment(s) or habilitation program(s).
  - Ability to refuse to submit to treatment, including medication, or habilitation program *if the individual is an adult voluntary patient*. (Indiana Code sec. 12-27-5-1).
  - Ability to choose not to participate in experimental research or treatment without informed, voluntary, written consent. Consent for experimental research may be withdrawn at any time.

- Humane treatment, which includes:
  - Humane care and protection from harm. (Indiana Code sec. 12-27-2-1 (2)).
  - Freedom from seclusion and restraint, unless used as a mode of treatment or in an emergency situation.
  - Treatment with consideration, dignity and respect—free from mental, verbal, and physical abuse, neglect and mistreatment.
  - Freedom from discrimination in receiving services on the basis of age, gender, race, color, sex, religion, national origin, and/or disability.
  - Information about patient rights promptly at the time of admission to the facility and periodically thereafter. The statement of rights must be conveyed in a manner of communication that is understandable by the individual.
- Record confidentiality, which includes:
  - Confidentially maintained records, as required by law.
  - Records being released only after obtaining written consent from the individual and only to those persons specified by the individual's consent.
  - An individual's right to inspect and copy his/her own records, unless denied for good cause.
- Professional consultation, which includes:
  - Private contact and consultation with an attorney of the person's choosing. (Indiana Code sec. 12-27-2-1 (4)).
  - Consultation with a doctor of the person's choosing.
  - Information about advocacy services available.
- Vote in elections, which includes:
  - Voting in national, state, or local elections which may occur during an individual's stay at the facility.
  - There is no legal effect on one's right to vote simply because one is involved in a commitment or guardianship proceeding.

### **Conditional Rights** (Indiana Code sec. 12-27-3)

While *individual rights* are guaranteed for all people, *conditional rights* can be taken away based on the behavior of the person and the safety of the individual, other residents, and staff. They can, however, only be restricted for certain reasons and under certain circumstances:

- According to the procedures established by the facility.
- According to certain circumstances in relation to the individual's treatment plan.
- On an individual basis, for good cause, described in the individual's treatment record, **and** approved by the person with primary responsibility for the individual's care and treatment.

Should the facility restrict a conditional right, notice of the denial or limitation of rights must be given to the:

- Patient, **and**
- Guardian or appointed advocate of the patient, if applicable.

The following list details some of the *conditional rights* available to individuals receiving treatment. The exercise of some of these rights may require payment by the individual. Individuals can check with their facility for specific costs associated with the rights listed below.

**Unless restricted for good cause, an individual conditionally HAS THE RIGHT TO:**

- Wear his/her own clothes.
- Keep and use personal possessions.
- Keep and be allowed to spend reasonable amounts of one's own money.
- Have access to individual storage space for private usage.
- Maintain reasonable means of communication with persons outside the facility.
- Be visited at reasonable times.
- Converse with others privately.
- Receive and send sealed (unopened) mail.
- Have access to a reasonable amount of letter writing materials and postage.
- Place and receive telephone calls.
- Be free from a requirement to work for the facility with or without pay, except for the completion of commonly required personal housekeeping. Residents of state-operated facilities cannot be required to apply any of their earnings to their hospital bill.

There are several legal actions and concepts that can also affect the rights listed previously. The most common legal areas and concepts that can have an impact on a person's rights include:

- Type and status of commitment,
- Guardianship, and
- Age.

This section will discuss how those areas affect patient rights.

**Type and Status of Commitment**

Involuntary patients have the same basic rights as voluntary patients, including confidentiality, humane care and treatment, freedom from harm, etc.; they cannot, however, leave the facility whenever they want, nor can they refuse court-ordered treatments—including medications—without court authorization. An individual involuntarily committed still has the right to:

- Dispose of property,
- Sign documents for himself/herself and provide his/her own consent,
- Make purchases,
- Enter into contracts,
- Give testimony in a court of law, and
- Vote.

Involuntarily committed patients also have the right to petition the committing court for review of their treatment program. (Indiana Code sec. 12-27-5-2). Outside of the regularly scheduled annual review, the committing court can be petitioned *one time per calendar year* for an additional review. (Indiana Code sec. 12-26-15-3).

### **Guardianship**

Guardianship is one factor that can influence a patient's *conditional rights*. This section explains what guardianship is and the types of guardianship some individuals receiving mental health treatment may be under.

### **Guardianship Definitions**

A legal *guardian* is a person appointed by a court who is responsible for the person and/or the property of an incapacitated person or minor. (Indiana Code sec. 29-3-1-6).

An *incapacitated person* (also called a “ward” or “protected person”) is defined as someone who is unable to manage her or his personal property and/or cannot provide self-care for any of the following reasons:

- Confinement
- Detention
- Duress
- Excessive use of drugs
- Fraud
- Habitual drunkenness
- Has a developmental disability
- Incarceration
- Infirmary
- Insanity
- Mental deficiency
- Mental illness
- Undue influence of others on the individual
- Other incapacity
- Cannot be reasonably located for the reasons above

(Indiana Code sec. 29-3-1-7.5).

## **Types of Guardianship**

There are several types of guardianships that a court could decide to grant. They include:

- *Guardian of the person*: Guardian oversees the protected person's living situation and medical and other treatment decisions.
- *Guardian of the estate*: Guardian manages the protected person's money, assets, and other property.
- *Guardian of the person and estate (Plenary Guardianship)*: Guardian oversees both of the first two categories. (Indiana Code sec. 29-3-5-3). This is the most common type of guardianship.
- *Limited guardianship*: The court might use this category to give limited or specified powers for the guardian for the protected person's well-being and circumstances. (Indiana Code sec. 29-3-5-3(b)).
- *Temporary guardianship*: Granted by the court under emergency circumstances and lasts no more than 90 days. (Indiana Code sec. 29-3-3-4). The powers of a temporary guardian are typically limited.

## **Age**

Being under the age of 18 can also impact a person's *conditional rights*. In Indiana, individuals under the age of 18 are considered minors. As minors, rights are restricted by the law because minors are deemed unable to make decisions due to age, not because of any particular diagnosis.

Federal law lists specific rights that a minor does not have due to age. A minor does not have the right to:

- Refuse treatment.
- Give consent for treatment.
- Give consent to allow or to stop others from reviewing his/her treatment records.

A minor does retain many rights, however. Just like adults, minors have the right to participate in treatment planning, use the grievance process, be visited at reasonable hours and converse in private with individuals. His/her parent or guardian continues to hold the authority to make decisions regarding his/her life just as any parent or guardian would if the minor was not in treatment. For a minor admitted to a mental health treatment facility, an individual employed at the facility or who is receiving any compensation from the facility is prohibited from acting as that minor's guardian or representative.

# Frequently Asked Questions

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This section is designed to answer some of the most frequently asked questions by persons receiving treatment in a mental health facility.

## **Can a person be committed or re-committed without seeing a judge?**

Regular commitments that are being considered for renewal may recommit the individual without an in-person hearing. This is legal.

At least once a year, the court requires the facility to submit a report regarding each individual's mental condition, and whether the individual is still dangerous or gravely disabled. The report makes a recommendation about whether the individual should remain at the facility and whether the individual is in need of a guardian.

Once the court has received this statement from the facility, it may take one of three actions:

1. The most common court response will be to issue an order for continued treatment and care, or for "re-commitment."
2. The court could issue an order for the termination of the commitment and release the individual.
3. The court may set a date for a hearing to hear further evidence on the matter.

Should the court issue an order continuing the commitment, the individual or his/her representative will receive a copy of the order and may request a court hearing. (Indiana Code sec. 12-26-5-2). *This right to a review (hearing) is limited to one time per year*, unless the court determines there is good cause for additional reviews. (Indiana Code sec. 12-26-15-3).

Once a hearing request is received by the court, a hearing date will be set. The court can set the date for the hearing at any time the court chooses. The individual and his/her legal counsel, if applicable, will receive at least five (5) days' notice of the hearing date.

## **If a person seeks treatment voluntarily, can they leave the facility or hospital at any time?**

Even when an individual seeks treatment from a facility or hospital under a voluntary admission, problems may arise when he/she decides to leave.

*A voluntary admission does not guarantee the individual's right to leave at any time.* If an individual wants to leave, he/she must give the facility 24 hours' notice. (Indiana Code sec. 16-41-9-7). This gives the facility the chance to make a medical decision on whether it can allow the individual to leave or whether it needs to take steps to legally hold the person. If the facility decides to hold the person, it must inform the person and file a petition with the court within five (5) days. (Indiana Code sec. 12-26-3-5). Once this has been done, the facility may still legally hold the individual until a hearing.

The individual should be given the opportunity to appear in court for his/her hearing. However, the facility can petition the court to not allow the individual to appear if his/her appearance in court may be harmful to his/her treatment.

## **What can a person do if he/she believes he/she doesn't belong in the facility?**

If a person feels that he/she is not mentally ill or otherwise should not be in the facility, the individual should take steps to find out why it is he/she is being held. If the individual is under a commitment order, then it will take a new court order to release the person. Explanations of the types of commitments can be found in the "Definitions and Types of Commitment" section on pages 5–8 of this book.

Individuals have the right to ask the committing court for a review hearing. The law only allows *one review per year*, unless the court determines there is good cause for an additional hearing. (Indiana Code sec. 12-26-15-3). Facility assigned social workers can assist individuals in contacting the committing court to request commitment reviews. The court will then make a determination as to whether an individual's commitment will continue.

If an individual is being held without a commitment order, call Indiana Disability Rights for help at 1-800-622-4845.

## **Can a patient refuse medications or other treatments?**

Since medications are an important part of treatment, individuals should make every effort to have their concerns resolved. An individual's right to refuse treatment or medications depends upon his/her commitment status. Descriptions of each type of commitment can be found in the "Definitions and Types of Commitment" section on pages 5–8 of this book.

Individuals who have concerns about treatment methods should first speak with their doctor or treatment team. People receiving treatment have the right to be informed of:

- The treatment process along with the reasons why that type of treatment is considered appropriate.
- The possible side effects associated with the treatment.
- Any alternative treatments.
- The various types of providers of mental health services.

In preparation for an appointment with one's treatment team or doctor, one should consider the reasons he/she wants changes made to the current medication or treatment plan. That way the individual can share this with his/her doctor or treatment team when the appointment takes place.

Voluntarily admitted patients do have the right to refuse treatment. (Indiana Code sec. 12-27-5-1). However, court-ordered treatments may not be refused. Individuals may petition the court, though, for a hearing to ask for changes in the treatment or medications. (Indiana Code sec. 12-27-5-2). Once such a petition has been filed, the facility may stop the treatment in question until the issue can be addressed at a hearing.

### **Is it legal for a facility to place a person in restraints or seclusion?**

Under certain circumstances, a facility can legally use restraints or seclusion. They may be used if necessary to prevent danger of abuse or injury to the individual or others. (Indiana Code sec. 12-27-4-1 (1)). Restraints or seclusion may also be used if done so as a part of therapeutic treatment. (Indiana Code sec. 12-27-4-1 (2)).

Restraints or seclusion may be used only if less restrictive interventions have been attempted and failed. Only a physician can authorize seclusion or restraint. His/her order must be documented and should be time-limited. (Indiana Code sec. 12-27-4-2).

While an individual is in seclusion or restraint, he/she must be frequently observed by staff. Written documentation of the restraint and/or seclusion must be placed in the individual's treatment record. (Indiana Code sec. 12-27-4-3).

Individuals who have been restrained or secluded and feel the use of these measures was not necessary or was inappropriate have the right to file a complaint or grievance about it. Information about the grievance process can be found on pages 18–19 of this book.

## **Do patients get to choose their doctor?**

Individuals receiving voluntary treatment have the legal right to seek treatment from a doctor of their choice, provided the individual can pay for it. Individuals receiving involuntary treatment under a commitment order may request a change of doctor, but the facility is not obligated to provide a new one.

## **Does a person in a facility have to pay for his/her treatment?**

Yes; if a person in a state institution has insurance coverage for hospitalization or medical services in psychiatric hospitals, those benefits must be assigned. (Indiana Code sec. 12-24-13-7). The person and person's spouse are personally liable and the guardian and trustee are liable as representatives of the person for payments of charges. Additionally, upon death, the estate of an individual receiving care, treatment, maintenance, or any other service in a facility is liable for the payment of charges. (Indiana Code sec. 12-24-13-11).

However, according to the Indiana Division of Mental Health and Addiction (DMHA), "no one is denied admission because of lack of financial resources."<sup>1</sup> Because each individual's financial situation is unique, specific questions about billing should be addressed with the facility.

## **Are there circumstances in which a person's Social Security check could go to someone else?**

The Social Security Administration (SSA) has an established administrative process which sometimes appoints a representative payee to receive an SSA recipient's check. This appointment occurs when the SSA believes that an SSA recipient is incapable of managing his/her own benefits due to his/her physical or mental conditions. (42 U.S.C. sec. 405 and sec. 1383).

Representative payees are required to spend the SSA checks for the needs of the recipient. Spending can be for items such as shelter, treatment, food, clothing, and personal items. While there is much power given to the representative payee in determining what needs are to be met from the Social Security benefit, SSA requires the representative payee to account for how the money was spent.

Since the appointment of a representative payee is done by the SSA and not by a court, the decision can be challenged by contacting the SSA. Contact information for the SSA can be found on page 27 in the "Resources" section at the end of this book.

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<sup>1</sup>State of Indiana Family and Social Services. Department of Mental Health and Addiction. *State Psychiatric Hospitals*. 2017. Web. 22 June 2017. <http://www.in.gov/fssa/dmha/4325.htm>

## **Can a facility be a representative payee for one of its patients?**

Yes, the hospital may be appointed as the representative payee for one of its patients. In such cases, the Social Security Administration has empowered the facility to make decisions regarding the use of the patient's Social Security money. The hospital can make decisions regarding what bills to pay, including payment of the hospital bill.

## **Can a person who is under a commitment still vote?**

People who are legally eligible to vote still maintain the right to vote in local, state, and national elections—even if they are under a commitment.

In order to do so, individuals must first register to vote. Treatment facilities can help individuals get registered or help them check to see if they are already registered. The registration form will ask for an address. Individuals may choose to use the facility's address on the voter registration form. They may also choose to use another address that complies with Indiana voting laws. Once individuals are registered, there are several ways they can vote. One way they can choose to vote is by mail. They will need to complete a form requesting to vote by mail and send the request form to the county's Election Board; facilities can help individuals find this information. Individuals are encouraged to mail the request early since there are time limits for how close to Election Day individuals are allowed to vote through the mail. Once the Election Board receives a request, it sends the ballot in the mail. Individuals simply fill it out and send it back to the Election Board for counting.

Another way individuals can choose to vote is through the Traveling Voter's Board. Individuals who choose this option will need to complete a form requesting to vote through the Traveling Board. Facilities can help individuals contact the county's Voter Registration Office to obtain the form; they can also help individuals complete the form. Just like voting by mail, it is important to request the Traveling Board early so as not to miss the deadline. The request should be mailed to the county's Election Board who will then contact the individual to schedule a time for him/her to vote. On the scheduled date, two people—one Republican and one Democrat—will bring a ballot to the facility so that the individual can vote.

Should there be any trouble registering, requesting a ballot in the mail, or requesting the Traveling Board, ask the facility for assistance or call Indiana Disability Rights at 1-800-622-4845.

## **How can a person file a complaint or grievance within the facility?**

Rights are meaningless unless they are respected by others. If a violation of rights does occur, steps can be taken to resolve the issue.

The right to file formal grievances is guaranteed by federal law. The problem for most people is finding out how to make their complaints or grievances known. Depending on the issue,

certain individuals and groups may or may not have the authority to either assist or investigate the complaint.

The most logical first step is for an individual to contact either his/her treatment team or social worker. While this is not usually considered a formal step to any grievance process, it does allow for a possible resolution. The treatment team or social worker can also assist with filing a formal complaint with the facility.

Each program or facility is required to offer a fair and timely internal grievance process. The facility must inform individuals of the grievance process and how to access it. Individuals can get a complaint resolution form from either the direct care staff at their facility or from the assigned social worker. Someone associated with the facility will investigate the situation and attempt to find a satisfactory resolution on behalf of both the individual and the facility.

Individuals can also contact the Mental Health Ombudsman Program if the complaint does not involve allegations of abuse, neglect, or financial exploitation. If the Ombudsman determines that the complaint has merit, he/she will make recommendations to the agency, facility or program. (Indiana Code sec. 12-27-9-5). Contact information for the Mental Health Ombudsman Program can be found on page 27 in the “Resources” section at the back of this book.

Other county-based resources may be available and individuals can always contact Indiana Disability Rights at 1-800-622-4845.

### **How can a person file a complaint or grievance outside the facility?**

Individuals may wish to seek outside assistance regarding concerns involving civil rights, the denial of rights, abuse, neglect, or discrimination. Individuals have the right to contact advocacy organizations privately and can find contact information for several agencies on page 27 in the “Resources” section at the back of this book. Indiana Disability Rights (IDR) can also look into the matter and may assist individuals in better understanding and exercising their rights. IDR can be reached at 1-800-622-4845.

Be aware that some agencies or programs may, by law, only have the authority to address certain issues. Also be aware that there may be a limited period of time to file a complaint after an issue occurs.

Before contacting an outside agency, it is important to have as much information as possible. The following are some questions individuals can expect to be asked:

- What happened?
- When did it happen and for how long?
- Is the complaint about a specific person or persons? If so, who?
- Are there any witnesses?
- Is there any kind of documentation of the incident?

# Indiana's Patient Rights Statute (Indiana Code 12-27)

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*All law is current as of July 2017.*

## **ARTICLE 27. Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities**

### **Ind. Code 12-27-1 | Chapter 1: Application**

#### **12-27-1-1 | Patients Covered by Article.**

This article applies to a patient receiving mental health services or developmental training in or from a service provider.

**History:** *P.L.2-1992, sec. 21.*

#### **12-27-1-2 | Individuals under Department of Correction not Covered by Article.**

This article does not apply to an individual receiving mental health services or developmental training under the department of correction.

**History:** *P.L.2-1992, sec. 21.*

#### **12-27-1-3 | Election to be covered by Article.**

A private practitioner or other person not covered by this article may elect to be subject to this article by notifying the director of the appropriate division in writing of the election.

**History:** *P.L.2-1992, sec. 21.*

#### **12-27-1-4 | Adoption of Rules.**

Each division shall adopt rules under IC 4-22-2 to implement this article.

**History:** *P.L.2-1992, sec. 21.*

### **Ind. Code 12-27-2 | Chapter 2: Rights of Patients**

#### **12-27-2-1 | Enumeration of Rights.**

Subject to section 2 [IC 12-27-2-2] of this chapter, a patient is entitled to all of the following:

1. Mental health services or developmental training:
  - (A) In accordance with standards of professional practice;
  - (B) Appropriate to the patient's needs; and
  - (C) Designed to afford a reasonable opportunity to improve the patient's condition.
2. Humane care and protection from harm.
3. The right to practice the patient's religion.
4. Contact and consultation with legal counsel and private practitioners of the patient's expense.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-2-2 | Limitations on Rights.**

- (a) The rights set forth in section 1 [IC 12-27-2-1] of this chapter are subject to the limitation that there may be certain conditions for which there is no known effective treatment or developmental training.
- (b) A service provider is not required to afford mental health services or developmental training where treatment would not be likely to produce a significant improvement.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-2-3 | Constitutional, Statutory, and Civil Rights.**

- (a) A patient is entitled to exercise the patient's constitutional, statutory, and civil rights except for those rights that have been denied or limited by an adjudication or finding of mental incompetency in a guardianship or other civil proceeding.
- (b) This section does not validate the otherwise voidable act of an individual who was:
  - (1) Mentally incompetent at the time of the act; and
  - (2) Not judicially declared to be mentally incompetent.

**History:** *P.L.2-1992, sec. 21.*

## **Ind. Code 12-27-3 | Chapter 3: Conditional Rights of Patients in Residential Settings**

### **12-27-3-1 | "Reasonable Means of Communication" Defined.**

As used in this chapter, "reasonable means of communication" includes the following rights:

- (1) To be visited at reasonable times.
- (2) To send and receive sealed mail.
- (3) To have access to a reasonable amount of letter writing materials and postage.
- (4) To place and receive telephone calls at the patient's own expense.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-3-2 | Additional Rights.**

The rights described in this chapter are in addition to the rights recognized in IC 12-27-2.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-3-3 | Enumeration of Rights.**

Subject to section 4 [IC 12-27-3-4] of this chapter, a patient receiving services or training in a residential setting is conditionally entitled to do all of the following:

- (1) Wear the individual's own clothes.
- (2) Keep and use personal possessions.
- (3) Keep and spend a reasonable amount of the individual's own money.
- (4) Have access to individual storage space for private use.
- (5) Maintain reasonable means of communication with persons outside the facility.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-3-4 | Denial or Limitation of Rights.**

The conditional rights recognized in this chapter may be denied or limited as follows:

- (1) In the circumstances and according to the procedures established by rules of the appropriate division.
- (2) Because of inconsistency with the design of a treatment or habilitation program if the program design has been approved by the division.
- (3) On an individual basis, only for good cause as set forth in the individual treatment record and approved by the person primarily responsible for the patient's care and treatment.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-3-5 | Notice of Denial or Limitation of Rights.**

The service provider shall give notice of denial or limitation of rights under section 4 [IC 12-27-3-4] of this chapter to the following:

- (1) The patient.
- (2) The guardian or appointed advocate of the patient.

**History:** *P.L.2-1992, sec. 21.*

## **Ind. Code 12-27-4 | Chapter 4: Seclusion and Restraint of Patients**

### **12-27-4-1 | Grounds for Seclusion or Restraint.**

A service provider may use seclusion or restraint of a patient only in the following cases:

- (1) When necessary to prevent danger of abuse or injury to the patient or to others.
- (2) As a measure of therapeutic treatment.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-4-2 | Record of Instances of Seclusion or Restraint.**

A service provider shall record all instances of restraint or seclusion and detailed reasons for the restraint or seclusion in the patient's habilitation or treatment record.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-4-3 | Observation of Restrained or Secluded Patient.**

A service provider shall do the following:

- (1) Frequently observe a patient who is restrained or secluded.
- (2) Enter written notification of the observation in the patient's treatment or habilitation record.

**History:** *P.L.2-1992, sec. 21.*

## **Ind. Code 12-27-5 | Chapter 5: Refusal of Treatment**

### **12-27-5-1 | Voluntary patients.**

An adult voluntary patient who is not adjudicated mentally incompetent may refuse to submit to treatment or a habilitation program.

**History:** *P.L.2-1992, sec. 21.*

### **12-27-5-2 | Involuntary patients.**

- (a) An involuntary patient who wants to refuse to submit to treatment or a habilitation program may petition the committing court or hearing officer for consideration of the treatment or program.
- (b) In the absence of a petition made under subsection (a), the service provider may proceed with the proposed treatment or habilitation program.

*History: P.L.2-1992, sec. 21.*

## **Ind. Code 12-27-6 | Chapter 6: Information Concerning Rights of Patients**

### **12-27-6-1 | Patient to have access to information on rights.**

The administrative head of a facility subject to this article shall ensure that each patient in the service provider's care has access to the information contained in this article respecting the patient's rights.

*History: P.L.2-1992, sec. 21.*

### **12-27-6-2 | Patient to be informed concerning nature and effects of treatment.**

A service provider shall inform all patients of the following:

- (1) The nature of the treatment or habilitation program proposed.
- (2) The known effects of receiving and of not receiving the treatment or habilitation
- (3) Alternative treatments or habilitation programs, if any.

*History: P.L.2-1992, sec. 21.*

### **12-27-6-3 | Eligible patient to be informed of right to refuse treatment.**

- (a) A service provider shall inform all adult voluntary patients who are not adjudicated mentally incompetent of the right to refuse to submit to treatment or a habilitation program.
- (b) A service provider shall inform all involuntary patients, verbally and in writing, of the right to petition the committing court or hearing officer for consideration of the treatment or program.

*History: P.L.2-1992, sec. 21; amended by P.L. 121-1996, sec. 2.*

## **Ind. Code 12-27-7 | Chapter 7: Waiver of Rights**

### **12-27-7-1 | Waiver to be given voluntarily and knowingly.**

A patient may waive any of the rights enumerated in this article if the waiver is given voluntarily and knowingly.

*History: P.L.2-1992, sec. 21.*

### **12-27-7-2 | Withdrawal of waiver.**

A waiver made under section 1 [IC 12-27-7-1] of this chapter may be withdrawn at any time.

*History: P.L.2-1992, sec. 21.*

**12-27-7-3 | Admission to treatment conditioned on waiver prohibited.**

Admission to a treatment or habilitation program may not be conditioned upon the giving of a waiver under section 1 [IC 12-27-7-1] of this chapter.

*History: P.L.2-1992, sec. 21.*

**Ind. Code 12-27-8 | Chapter 8: Remedies**

**12-27-8-1 | Violations remedied under this chapter.**

A violation of rights recognized by this article may be remedied under this chapter.

*History: P.L.2-1992, sec. 21.*

**12-27-8-2 | Legal Actions — Money damages.**

- (a) An individual whose rights were violated or a person authorized by statute to act on the individual's behalf may bring an action.
- (b) An action under this section shall be brought in a court that has jurisdiction.
- (c) In an action under this section, money damages may be awarded only for willful or wanton violation of the rights recognized by this article.

*History: P.L.2-1992, sec. 21.*

**12-27-8-3 | Administrative actions.**

A violation of rights recognized by this article may be remedied by an appropriate administrative action, including the following:

- (1) Disciplinary action against an employee.
- (2) Withdrawal of certification, license or funding of a service provider.

*History: P.L.2-1992, sec. 21.*

**Ind. Code 12-27-9 | Chapter 9: Mental Health Ombudsman Program**

**12-27-9-2 | Information and records confidential.**

Except as provided under section 6 [IC 12-27-9-6] of this chapter, all information and records of the ombudsman under this chapter are confidential and may not become public records or be subject to a subpoena or discovery proceedings.

*History: P.L. 40-1994, sec. 62.*

**12-27-9-3 | Operation of program.**

Within the limits of appropriated funds, the division of mental health shall contract in writing with a nonprofit corporation for the operation of the mental health ombudsman program. The nonprofit corporation must:

- (1) Be qualified to receive tax deductible contributions under Section 170 of the Internal Revenue Code [26 U.S.C. sec. 170];
- (2) Have offices statewide; and
- (3) Have experience in mental health advocacy.

*History: P.L.40-1994, sec. 62; amended by P.L. 215-2001, sec. 75.*

**12-27-9-4 | Requirements of program — records.**

- (a) The mental health ombudsman program operated under this chapter must do the following:
  - (1) Have at least one (1) full-time person to operate the program.
  - (2) Recruit and train volunteers to help carry out the duties of the program under this chapter.
  - (3) Mediate or advocate on behalf of mental health patients.
  - (4) At the request of a mental health patient, or upon receiving a complaint or other information affording reasonable grounds to believe that the rights of a mental health patient who is not capable of requesting assistance have been adversely affected, gather information about, analyze and review on behalf of the mental health patient, the actions of an agency, a facility or a program.
  - (5) At reasonable times in the course of conducting a review, enter and view premises within the control of an agency, a facility, or a program.
- (b) The mental health ombudsman shall maintain records of all activities on behalf of consumer and report all findings to the division on a quarterly basis.

**History:** *P.L. 40-1994, sec. 62.*

**12-27-9-5 | Receipt of complaints — determination of complaint — recommendations.**

- (a) The ombudsman may receive a complaint from the division of mental health's toll-free number (IC 12-21-5-1.5) or any source concerning an action by an agency, a facility or a program. After completing a review, the ombudsman shall inform the complainant and the agency, facility or program that the review has been completed.
- (b) If, after:
  - (1) Reviewing a complaint;
  - (2) Considering the response of an agency, a facility, or a program; and
  - (3) Considering any other pertinent material;
  - (4) The mental health ombudsman determines that the complaint has merit, the ombudsman may make recommendations to that agency, facility or program.
- (c) At the ombudsman's request, the agency, facility or program shall, within a reasonable time, inform the ombudsman about the action taken on the ombudsman's recommendation under subsection (b) or the reasons for not complying with the ombudsman's recommendation.

**History:** *P.L. 40-1994, sec. 62; amended by P.L. 215-2001, sec. 76.*

**12-27-9-6 | Reference to Division of Mental Health and Addiction or Indiana Disability Rights — statistics.**

- (a) If the ombudsman believes that the agency, facility or program has failed to comply with the ombudsman's recommendations, the ombudsman shall refer the matter to the division of mental health and addiction or the Indiana Protection and Advocacy Services Commission [Indiana Disability Rights] as appropriate.
- (b) The ombudsman shall compile annual statistics on each agency, facility or program on which it reviews a complaint or conducts an investigation and determines that the complaint has merit or the investigation reveals a problem. The statistic must specify the types of complaints or problems and each agency, facility or program that has failed to comply with the ombudsman's recommendations. The statistics shall be reported to the director of the division of mental health and addiction.

**History:** *P.L. 40-1994, sec. 62; amended by P.L. 215-2001, sec. 77.*

# Resources

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2-1-1 Partnership: A free and confidential 24/7 service connecting Hoosiers with human services throughout Indiana.

**2-1-1**

Adult Protective Services (APS): State program that handles allegations of abuse, neglect, and financial exploitation of disabled adults and elderly.

**1-800-992-6978**

American Civil Liberties Union of Indiana (ACLU): Advocates at no charge for Indiana residents or groups whose constitutional rights have been violated by governmental agencies.

**1-317-635-4059**

Division of Mental Health and Addiction Consumer Service Line: The consumer service line sends information about public mental health facilities on to the Division of Mental Health and Addiction (DMHA) and to the involved facility. DMHA responds to all callers.

**1-800-901-1133**

Indiana Civil Rights Commission (ICRC): State agency that investigates allegations of discrimination due to disability, race, sex, religion, national origin or national ancestry in education, employment, credit, public accommodations, and housing.

**1-800-628-2909**

Indiana Disability Rights (IDR): An independent state agency that promotes and protects the rights of people with disabilities. IDR is the Protection & Advocacy (P&A) system for the State of Indiana. IDR is responsible for this publication.

**1-800-622-4845**

Indiana's Mental Health Ombudsman: State program operated by the Mental Health Association.

**1-800-555-6424, ext. 239**

Key Consumer Organization, Indianapolis: Self-advocacy group for consumers of mental health services.

**1-800-933-KEYS (5397)**

National Alliance for the Mentally Ill, Indiana (NAMI): State chapter of the national organization dedicated to providing support, education and advocacy for consumers of mental health services and their families.

**1-800-677-6442 Indiana Chapter**

**1-800-950-6264 National Office Family Helpline**

Mental Health America of Indiana: Local chapter of the national Mental Health America.

**1-800-555-MHAI (6424)**

Social Security Administration (SSA): Federal agency that administers the social security program information.

**1-800-772-1213**

National Suicide Prevention Lifeline: National network that provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

**1-800-273-8255**

# Community Mental Health Centers in Indiana

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Adult and Child Mental Health Centers, Inc.  
Serving Columbus, Franklin, Greenwood, and Indianapolis, Indiana  
**1-877-882-5122**

Aspire Indiana, Inc.  
Serving Boone, Hamilton, Madison, and Marion counties  
**Information: 1-877-574-1254**  
**Crisis: 1-800-560-4038**

The Bowen Centers  
Serving Albion, Angola, Auburn, Columbia City, Fort Wayne, Huntington, La Grange, Pierceton, Plymouth, Syracuse, Wabash, and Warsaw, Indiana  
**1-800-342-5653**

Centerstone of Indiana, Inc.  
Serving Indiana in more than 60 statewide locations  
**Information: 1-800-344-8802**  
**Crisis: 1-800-832-5442**

Community Health Network Behavioral Health Clinics  
Serving Anderson, Frankfort, Greenfield, Greenwood, Indianapolis, and Shelbyville, Indiana  
**Information: 1-866-621-5719**  
**Crisis: 1-800-622-3445**

Cummins Behavioral Health Systems, Inc.  
Serving Boone, Hendricks, Marion, Montgomery, and Putnam counties  
**1-888-714-1927**

Edgewater Systems for Balanced Living, Inc.  
Serving Gary and Griffith, Indiana  
**1-219-885-4264**

Eskenazi Health Midtown Mental Health  
Serving Indianapolis, Indiana  
**1-317-880-0000**

Four County Comprehensive Mental Health Centers  
Serving the following areas:  
**Cass County: 1-574-722-5151**  
**Fulton County: 1-574-223-8565**  
**Miami County: 1-765-472-1931**  
**Pulaski County: 1-574-946-4233**  
**Kokomo: 1-765-452-5437**

Grant Blackford Mental Health (Cornerstone)  
Serving Hartford City and Marion, Indiana  
**1-765-662-3971**

Hamilton Center, Inc.  
Serving Bloomfield, Brazil, Clinton, Greencastle, Indianapolis, Linton, Plainfield, Rockville, Spencer, Sullivan, and Terre Haute, Indiana  
**1-800-742-0787**

Knox County Hospital, Good Samaritan Center  
Serving Knox County  
**Information: 1-812-886-6800**  
**Crisis: 1-800-824-7907**

LifeSpring Health Systems, Inc.  
Serving Austin, Corydon, Jeffersonville,  
Madison, New Albany, Salem, and Scottsville,  
Indiana  
**1-800-456-2117**

Meridian Health Services Corp.  
Serving Anderson, Connersville, Dunkirk, Fort  
Wayne, Indianapolis, Kokomo, Mishawaka,  
Muncie, New Castle, Portland, Richmond,  
Rushville, and Winchester, Indiana  
**Information: 1-866-306-2647**  
**Crisis: 1-800-333-2647**

Northeastern Center, Inc.  
Serving De Kalb, Steuben, La Grange, and  
Noble counties  
**1-260-347-2453**

Oaklawn Psychiatric Center, Inc.  
Serving Elkhart and St. Joseph counties  
**1-574-533-1234**

Park Center, Inc.  
Serving Bluffton, Decatur, and Fort Wayne,  
Indiana  
**1-260-481-2700**

Porter-Starke Services, Inc.  
Serving Knox, Portage, and Valparaiso,  
Indiana  
**1-219-531-3500**

Regional Mental Health Center  
Serving East Chicago, Hammond, Highland,  
Hobart, and Merrillville, Indiana  
**1-219-769-4005**

Southern Hills Counseling Center  
Serving English, Jasper, Paoli, Rockport, and  
Tell City, Indiana  
**1-812-482-3020**

Southwestern Indiana Mental Health Center  
Serving Gibson, Posey, Vanderburgh, and  
Warrick counties  
**1-812-423-7791**

Swanson Center  
Serving La Porte and Michigan City, Indiana  
**Information: 1-800-982-7123**  
**Crisis: 1-855-325-6934**

Wabash Valley Alliance, Inc.  
Serving Attica, Crawfordsville, Delphi,  
Frankfort, Lafayette, Monticello, Otterbein, and  
Rensselaer, Indiana  
**Information: 1-765-446-6400**  
**Crisis: 1-800-859-5553**



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INDIANA

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# DISABILITY RIGHTS

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Equality Through Advocacy

Additional and large print copies of this publication  
may be obtained by contacting:

**Indiana Disability Rights**  
4701 North Keystone Ave., Suite 222  
Indianapolis, IN 46205

Visit our website at  
**[www.IndianaDisabilityRights.org](http://www.IndianaDisabilityRights.org)**

**Voice**

317-722-5555 or 800-622-4845

**TTY**

317-722-5563 or 800-838-1131

**Fax**

317-722-5564